



H. R. 67

JANUARY 3, 1983

A BILL

To amend the Defense Production Act of 1950, as amended.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Defense Production Act
4 Amendments of 1983”.

5 SEC. 2. Insert immediately after title VII the following
6 new title:

7 “TITLE VIII—CONDUCT OF GOVERNMENT
8 PERSONNEL

9 “SEC. 801. (a) As used in this title, the term—

1 “(1) ‘executive agency’ means an executive de-
2 partment as defined by section 101 of title 5, United
3 States Code; an independent establishment as defined
4 by section 104 of title 5, United States Code (except
5 that it shall not include the General Accounting
6 Office); a military department as defined by section 102
7 of title 5, United States Code; and the United States
8 Postal Service;

9 “(2) ‘acquisitions officer’ means any employee of
10 an executive agency who by virtue of his position or
11 appointment in accordance with applicable agency reg-
12 ulations is authorized to solicit or select sources of
13 supply, define or describe requirements for, audit,
14 award, modify, terminate, or make determinations or
15 findings with respect to or to review, certify, or evalu-
16 ate contractor performance under any contract, or to
17 otherwise exercise any part of such authority, and who
18 receives compensation at a level equivalent to GS-11
19 or greater;

20 “(3) ‘compensation’ includes any payment, gift,
21 benefit, reward, favor, gratuity, or employment valued
22 in excess of \$50 at prevailing market price;

23 “(4) ‘contractor’ is any person, partnership, corpo-
24 ration, or agency thereof other than the United States,
25 the independent agencies thereof, or the District of Co-

1 lumbia, who offers, negotiates, agrees, or otherwise
2 contracts to supply the United States, the independent
3 agencies thereof, or the District of Columbia, with
4 goods, services, or supplies, and any parent, subsidiary,
5 or affiliate thereof; and

6 “(5) ‘procurement contract’ is any agreement
7 greater than \$25,000 by which the United States, the
8 independent agencies thereof or the District of Colum-
9 bia purchase, lease, or otherwise engage in the acquisi-
10 tion of supplies, services, or other materiel, to include
11 such agreements as orders for the procurement of serv-
12 ices or supplies; awards, notices of awards; contracts of
13 fixed price, incentive contracts, and cost and cost-plus-
14 a-fixed-fee contracts; contracts providing for the issu-
15 ance of job orders, task orders, or task letters thereun-
16 der; letter contracts and purchase orders; or any sup-
17 plemental agreement with respect to any of the
18 foregoing.

19 “(b) No acquisitions officer who at any time engaged,
20 personally and substantially, in duties of his office in regard
21 to any procurement contract shall accept compensation from
22 any contractor receiving funds under such contract for a
23 period of two years following his employment with the
24 United States, the independent agencies thereof, or the Dis-
25 trict of Columbia: Except that this paragraph shall not apply

1 to any duties performed by such acquisitions officer more
2 than three years before the termination of his employment
3 with the United States, the independent agencies thereof, or
4 the District of Columbia.

5 “(c) Whoever violates this section shall be guilty of a
6 felony, and shall be fined not more than \$5,000 or imprisoned
7 for not more than one year, or both.

8 “(d) Whoever knowingly and willfully offers, tenders, or
9 grants any compensation to any acquisitions officer in viola-
10 tion of this section, shall be guilty of a felony and shall be
11 fined not more than \$25,000 and imprisoned for not more
12 than one year, or both.

13 “(e)(1) This title shall take effect on January 1, 1982.

14 “(2) This title does not preclude the continuation of em-
15 ployment which commenced prior to the effective date of this
16 Act, or the receipt of compensation for such employment nor
17 does it apply to any acquisitions officer whose employment
18 with any executive agency terminated prior to the effective
19 date of this title.

20 “(3) This title shall not apply to any acquisitions officer
21 who is involuntarily separated from this service, not by re-
22 moval for cause or charges of misconduct, delinquency, or
23 inefficiency, or failure at selection to a higher grade.

24 “SEC. 802. (a) The Office of Personnel Management
25 shall have the authority to coordinate and review the admin-

1 istration and implementation of this title. In consultation with
2 the Attorney General, Administrator, Office of Federal Pro-
3 curement Policy, and appropriate agency heads, the Director
4 of the Office of Personnel Management is authorized to issue
5 regulations and to review agency regulations to implement
6 this title.

7 “(b) All departments and agencies of the Government
8 are authorized to cooperate with the Office of Personnel
9 Management and to furnish information, appropriate person-
10 nel, with or without reimbursement, and such financial and
11 other assistance as may be agreed to between the Office of
12 Personnel Management and the department or agency con-
13 cerned.

14 “(c)(1) Any person who is offered compensation that
15 might place him in violation of subsection (b) of section 801
16 of this title, prior to the acceptance of such compensation,
17 may apply to the Office of Personnel Management for advice
18 on the applicability of this title to such compensation. Such
19 application shall be made jointly by the acquisitions officer
20 and the contractor who proposes to grant such compensation,
21 and shall contain a full and complete description of the duties
22 of such applicant during the last three years of his employ-
23 ment as an acquisitions officer; any official responsibilities
24 such applicant exercised with regard to any procurement con-
25 tract in which an interest is or was retained by the contractor

1 which proposes to provide such compensation; and a descrip-
2 tion by a representative of the contractor, of the complete
3 terms and conditions of the proposed compensation, including
4 any prospective services that such applicant will perform on
5 behalf of the contractor. Promptly upon receipt of such appli-
6 cation, the Office of Personnel Management shall publish
7 notice thereof in the Federal Register.

8 “(2)(A) Not later than ten days after receipt of a com-
9 pleted application, the Office of Personnel Management shall
10 issue an interim advisory opinion stating whether payment
11 and receipt of such compensation would violate the intent of
12 this title. Pending issuance of a final advisory opinion, pay-
13 ment and receipt of such compensation may be temporarily
14 authorized if the interim advisory opinion finds, based on ini-
15 tial review, that such compensation would not result in a
16 violation of the intent of this title.

17 “(B) Not later than thirty days after receipt of a com-
18 pleted application, the Office of Personnel Management shall
19 issue a final advisory opinion stating whether payment and
20 receipt of such compensation would result in a violation of
21 the intent of this title.

22 “(3) Pursuant to regulations promulgated by the Direc-
23 tor of the Office of Personnel Management, interested parties
24 are permitted to present information or comments relating to
25 the issuance of any such advisory opinion.

1 “(4) The Director shall inform Congress, and publish a
2 notice in the Federal Register, within thirty days after the
3 issuance of any advisory opinion, describing—

4 “(A) the name of the applicant for such advisory
5 opinion;

6 “(B) the contractor from which such applicant in-
7 tends to accept compensation;

8 “(C) the duties of such applicant during the last
9 three years of his employment as an acquisitions offi-
10 cer;

11 “(D) any official responsibilities such applicant ex-
12 ercised with regard to any procurement contract in
13 which an interest is or was retained by the contractor
14 which proposes to provide such compensation;

15 “(E) a description by a representative of the con-
16 tractor, of the complete terms and conditions of the
17 proposed compensation, including any prospective serv-
18 ices that such applicant will perform on behalf of the
19 contractor; and

20 “(F) a statement of the findings of fact and opin-
21 ion which led the Office of Personnel Management to
22 conclude that such compensation would or would not
23 offend the intent of this title.

24 “(5) The Office of Personnel Management is authorized
25 to issue a statement of findings of fact and opinion along with

1 an advisory opinion finding that the proposed compensation
2 would not violate the intent of this title if—

3 “(A) the involvement of the applicant in a pro-
4 curement contract otherwise described in this title was
5 so remote or inconsequential that it could have had no
6 significant effect on the procurement contract in ques-
7 tion;

8 “(B) the involvement of the contractor in such
9 procurement contract was remote or inconsequential;
10 or

11 “(C) the national interest requires that, the prohi-
12 bitions of this title notwithstanding, such applicant
13 should be allowed to accept such compensation.

14 “(d) There shall be available to any person as a defense
15 in any criminal or civil case brought for violation of this title
16 that—

17 “(1) the Office of Personnel Management issued
18 an advisory opinion finding that such compensation
19 would not violate the intent of this title; and

20 “(2) such person fully complied, without alter-
21 ation, with the understanding of circumstances as ex-
22 pressed by the Office of Personnel Management in such
23 statement of findings of fact and advisory opinion, and
24 with any additional guidance or suggestions proposed
25 by the Office of Personnel Management; or

1 “(3) the Office of Personnel Management did not
2 file a timely advisory opinion, in accordance with the
3 provisions of subsection (c)(2)(A) or (c)(2)(B) of this sec-
4 tion.

5 “(e)(1) In furtherance of the duties and responsibilities
6 described in this title, the Office of Personnel Management is
7 authorized to hold such hearings, sit and act at such times
8 and places, administer such oaths, and require by subpoena or
9 otherwise the attendance and testimony of such witnesses
10 and the production of such books, records, correspondence,
11 memorandums, papers, and documents as the Office of Per-
12 sonnel Management may deem advisable.

13 “(2) In the case of contumacy or refusal to obey a sub-
14 pena issued under subsection (e)(1) by any person who re-
15 sides, is found, or transacts business within the jurisdiction of
16 any district court of the United States, the district court, at
17 the request of the Director of the Office of Personnel Man-
18 agement, shall have jurisdiction to issue to such person an
19 order requiring such person to appear before the Office of
20 Personnel Management, there to produce evidence if so or-
21 dered, or there to give testimony touching the matter under
22 inquiry. Any failure of any such person to obey any such
23 order of the court may be punished by the court as a con-
24 tempt thereof.

1 “(f) All such meetings to consider applications for an
2 advisory opinion on the applicability of section 801 of this
3 title shall be open to the public, and a verbatim transcription
4 of all such meetings shall be available for public inspection
5 during regular working hours at the offices of the Office of
6 Personnel Management.

7 “(g) The Director of the Office of Personnel Manage-
8 ment is required to promptly report to the Attorney General,
9 and to provide such assistance as may be required, whenever
10 he shall learn of an action which appears to involve a viola-
11 tion of this title or any other Federal law. The Attorney Gen-
12 eral shall report to the Director and to the Congress on the
13 disposition of any such case.

14 “(h) The Director shall review all agency programs to
15 assure that all positions subject to the provisions of section
16 801 of this title are identified, and that all persons subject to
17 these provisions are provided adequate notice of such prohibi-
18 tions and restrictions.

19 “(i) The Office of Personnel Management is authorized
20 to develop and promulgate appropriate regulations to imple-
21 ment this title.

22 “(j) The Director shall report to the Congress, on an
23 annual basis, on all activities, deliberations, and investiga-
24 tions, and shall recommend such legislative or regulatory ac-

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1 tions as he deems appropriate to promote high ethical stand-
2 ards for Government employees.

3 “(k) There are authorized to be appropriated such sums
4 as may be necessary to carry out the additional functions
5 imposed by this title.”.

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